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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,725	04/02/2004	Lawrence M. Lubbers	TTL-04US	1018
26875	7590	12/12/2007		
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			EXAMINER WOO, JULIAN W	
			ART UNIT 3773	PAPER NUMBER
			MAIL DATE 12/12/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

CT

<b>Office Action Summary</b>	<b>Application No.</b> 10/816,725	<b>Applicant(s)</b> LUBBERS ET AL.	
	<b>Examiner</b> Julian W. Woo	<b>Art Unit</b> 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-111 is/are pending in the application.
- 4a) Of the above claim(s) 1-67 and 73-110 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 68-70, 72 and 111 is/are rejected.
- 7) ☒ Claim(s) 71 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____  |

Continuation of Attachment(s) 3. Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :7/12/04,10/12/06,11/1/06,4/26/07.

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of claims 68-72 and 111 in the reply filed on November 19, 2007 is acknowledged.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 68-70, 72, and 111 are rejected under 35 U.S.C. 102(b) as being anticipated by Moreira (2,243,717). Moreira discloses, at least in figure 1, an apparatus including an elongate housing (15) having a first end, a second end, the first end configured to receive a soft tissue anchor; a handle (proximal portion of 15) disposed proximate the second end of the housing, a tubular shaft (12) disposed within the housing and having an inner bore, a driving member (14) disposed within the shaft and movable along the inner bore and having an inner channel, a first actuating member (proximal portion of 12) coupled to the shaft, and a second actuating member (19) coupled to the inner member; where the first and second actuating members are disposed proximate (i.e., near) the second end of the housing, where the apparatus includes a passage for receiving an elongate tensile member (10), where manipulation of the second actuating member extends the elongate tensile member and the inner member beyond the first end of the housing, and where the apparatus includes a soft

tissue anchor (S). With respect to claim 111, the handle is at the proximal portion of element 15, while the shaft is deemed to be element 10. Also with respect to claim 111, the driving member is deemed to be element 12, while the first actuating member is deemed to be the proximal portion of element 12. Note: The introductory statement of intended use ("for repairing soft tissue") has been carefully considered but deemed not to impose any structural limitations on the claims patentably distinguishable over Moreira's device, which is capable of being used as claimed if one desires to do so.

***Allowable Subject Matter***

4. Claim 71 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record, alone or in combination, discloses an apparatus including, inter alia, an elongate housing, a handle, a tubular shaft, a driving member, an inner member, and first and second actuating members, where an elongate tensile member is disposed within the inner member, where a needle is coupled proximate a distal end of the elongate tensile member, and where the inner member is engageable with the needle to extend the elongate tensile member and the needle past a first end of the housing.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (571) 272-4707. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julian W. Woo  
Primary Examiner

December 10, 2007